

**DEPARTMENT OF STATE REVENUE
REVENUE RULING ST 96-10
SEPTEMBER 23, 1996**

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE: Application of Indiana sales/use tax to leases of railroad cars

RULING REQUESTED:

(1) Taxpayer requests Department rule on the taxability of its leases with out of state lessees, regardless of when those leases were executed or where the cars are or were delivered or used.

STATEMENT OF FACTS:

Taxpayer is a Delaware corporation with its principal executive and administrative offices in Chicago, Illinois. Taxpayer is primarily engaged in the business of leasing railroad tank cars and other "specialty" railroad cars (hereinafter generally referred to as "cars") to manufacturers and shippers of bulk liquid, compressed gas, and powdered or pelletized products. Generally, most of the cars that Taxpayer leases are manufactured by the Taxpayer at its manufacturing facility located in Indiana. Although the Taxpayer may sell railroad cars that it manufactures, its primary business is the leasing of cars. Taxpayer is an Indiana registered retail merchant.

Taxpayer's rental fleet consists of tens of thousands of cars leased to lessees throughout the United States, Canada and Mexico. The location from which the car is delivered to the lessee depends upon the availability of cars and the specific needs or requests of the lessee. For example, if a new car is leased to a lessee, the car is delivered from Taxpayer's manufacturing facility located in Indiana, or from one of its lining facilities located in Pennsylvania, Iowa, Louisiana or Georgia. On the other hand, if a used or existing car is leased to a lessee, the car may be delivered from one of taxpayer's storage areas or repair and maintenance facilities located throughout the United States or from some other location.

The leased cars are delivered by railroad to a location designated by the lessee. The lessee may, for example, request delivery to its headquarters, one of its plants, a railroad car manufacturer for installation of specialized equipment, or to another company's loading dock.

Leased cars are moved by railroads throughout the United States, Canada and Mexico. Taxpayer has no knowledge of the number of miles traveled or time spent in any state by a particular leased car. The rental terms are usually for an average of approximately ten (10) years, which mean that there are extended periods of time when Taxpayer has no knowledge of the number of miles traveled or time spent in each state by a specific leased car.

Taxpayer bills its lessees monthly under its lease. Taxpayer uses the billing addresses provided to it by its lessees. This address may or may not be the location to which the leased cars were delivered and the leased cars may or may not ever be used at the billing address. However, the billing address is easily ascertainable from Taxpayer's records.

DISCUSSION:

Taxpayer requests that its car leases with out-of-state lessees, regardless of when those leases were executed or where the cars are or were delivered or used are not subject to the collection of Indiana sales tax.

Indiana Code § 6-2.5-3-1 provides:

Sec. 1. For the purposes of this chapter:

- (a) "Use" means the exercise of any right or power of ownership over tangible personal property.
- (b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

Taxpayer's leases are negotiated out of Indiana. Rail cars leased to out of state lessees are delivered by railroad to a location designated by the lessee. The lessee may request delivery to its headquarters, one of its plants, a railroad car manufacturer for installation of specialized equipment, or to another company's loading dock. The rail cars may be delivered from Taxpayer's manufacturing facilities in Indiana, Iowa, Pennsylvania, Louisiana or Georgia. Since the rail cars are delivered by a common carrier (railroad) for subsequent use outside of Indiana, Indiana sales/use tax would not be due.

Indiana Code § 6-2.5-4-10 provides:

Sec. 10. (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person.

Taxpayer has a railroad car manufacturing facility located in Indiana and also leases railroad cars to Indiana lessees. Taxpayer is registered to collect Indiana sales/use tax.

Indiana Code § 6-2.5-3-7 provides:

(a) A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the person or the retail merchant can produce evidence to rebut that presumption.

(b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form prescribed by the department that the acquisition is exempt from the use tax.

If delivery of the rail car to an Indiana lessee occurs outside of Indiana, Indiana Code § 6-2.5-3-5 provides:

Sec. 5. (a) A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

Taxpayer has requested that due to the fact that rail cars are constantly moving and that it is impossible to determine exactly what state the rail car is based, that it be allowed to report sales/use tax on the basis of the bill to address. Indiana sales/use tax law does not address this particular issue; however, the Department has, in the case of telecommunications companies, followed the Multistate Tax Commission's Uniform Principles Governing State Transactional Taxation of Telecommunications, which provides that in the case of mobile telephones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the telephone number, authorization code, or location in this state where the bills are sent. (emphasis added). As a general rule, the state of the owner's domicile has the power to tax personal property unless the taxpayer proves that an actual situs has been established in another state. Central R. Co. of Pa. v Pennsylvania, 82 U.S. Ct. 1297 (1962). The Department believes that sales tax should be due on all leases to Indiana lessees, based on billing address.

Taxpayer requests a ruling that on all leases with Indiana lessees it will have no Indiana sales/use tax obligation if Taxpayer obtains an exemption certificate or a direct-pay permit from the lessee. Indiana Code § 6-2.5-8-5 states that a seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase. Likewise, Indiana Code § 6-2.5-8-9 states that a retail merchant who accepts a direct payment certificate has no duty to collect or remit the state gross retail or use tax on that transaction.

RULING

The Department rules that Taxpayer's car leases with out-of-state lessees are not subject to the Indiana sales/use tax providing there is no evidence to indicate the rail cars are based in Indiana. The Department rules that Indiana sales/use tax is due on all leases with Indiana lessees, based on billing address, unless evidence is available to indicate that the rail cars are based out of Indiana. Rail cars delivered to Indiana lessees out of Indiana will be subject to Indiana sales/use tax; however, Indiana will allow a credit for any tax paid to another state on the lease of the rail car. Furthermore, the Department rules that if the Taxpayer obtains either properly executed exemption certificates or direct pay permits from its lessees no sales/use tax is due.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situation may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of Revenue